

The stipulations as specifically set forth in the Award of Administrative Law Judge Floyd V. Palmer, dated January 25, 1994, are herein adopted by the Appeals Board.

ISSUES

Administrative Law Judge Floyd V. Palmer, in his Award dated January 25, 1994, denied claimant workers compensation benefits finding that the amputation of the claimant's left middle finger and resulting impairment did not arise out of her employment with the respondent.

From this finding, the claimant files an Application for Review before the Appeals Board, raising the following issues:

- (1) Whether claimant's personal injury by accident arose out of and in the course of her employment with the respondent.
- (2) What is the nature and extent of claimant's disability?
- (3) Whether claimant is entitled to future medical treatment.
- (4) Whether claimant is entitled to unauthorized medical benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record and the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

- (1) Whether the claimant's alleged personal injury by accident arose out of and in the course of her employment with the respondent is the threshold issue that the Appeals Board will first address in the case at hand. Administrative Law Judge Palmer found that claimant had sustained an injury to her left middle finger as a result of a work-related accident but found that such accident did not have a causative effect on her resulting functional impairment from the amputation of her left middle finger.

Prior to a patient grabbing the claimant's finger, squeezing it, twisting it, and bending it back on July 7, 1988, while performing her job duties for the respondent as a psychiatric nurse, claimant had been treated for sarcoidosis, a pre-existing medical condition. Sarcoidosis is a granulomatous disease that is non-infectious. It erodes and displaces tissue that it involves. As early as April 1986, the claimant was diagnosed with this disease by George Richardson, M.D., an orthopedic surgeon, at the University of Kansas Medical Center in Kansas City, Kansas. Dr. Richardson treated the claimant for this disease from April 2, 1986 until her last visit of October 27, 1989. Dr. Richardson saw her several times between these dates, performing initial surgery on April 10, 1986, to excise soft tissue and a tumor from her left middle finger, and surgery on July 26, 1988, to amputate her left middle finger.

In July 1987, x-rays had indicated that the sarcoidosis had progressed to a point that her PIP joint of the left middle finger was damaged. When claimant was seen by Dr. Richardson on November 30, 1987, an accident had occurred at work to her finger that caused her significant pain. At that time, Dr. Richardson first discussed with the claimant

the treatment option of amputation to make the hand more functional and to free her of pain.

Dr. Richardson testified in this matter on behalf of the respondent and the Kansas Workers Compensation Fund on July 30, 1992. When questioned in regard to whether there was any causal effect or connection between the claimant's work-related accident of July 7, 1988 and the amputation of claimant's finger, Dr. Richardson's testimony was inconsistent. He opined that the accident was kind of the final straw but it was not the cause of the amputation. However, he went on to testify that the July 7, 1988 accident exacerbated the pain and such increased pain was a precipitating factor in the claimant consenting to finally having the finger amputated. Dr. Richardson testified that prior to the July 7, 1988 accident, he explained the amputation process to the claimant. However, she did not consent to this treatment option until after her finger was injured on July 7, 1988.

At the claimant's attorney's request, John J. Wertzberger, M.D., an orthopedic surgeon in Lawrence, Kansas, examined and evaluated the claimant concerning causation and functional impairment on March 23, 1992. As to the question of causation, it was Dr. Wertzberger's opinion that as a result of the July 7, 1988 accident, the claimant's finger was fractured and the presence of the fracture accelerated the amputation treatment option. Dr. Wertzberger answered in the affirmative, without objection, that if claimant had not had the work-related accident, it is possible that she would not have had her finger amputated. Dr. Wertzberger also found that claimant suffered from carpal tunnel syndrome in reference to her left extremity that had resulted from the physical therapy program she had undergone while rehabilitating her left hand after the amputation surgery. Dr. Richardson also had noted carpal tunnel syndrome but did not have an opinion as to the origin of the condition.

After the July 7, 1988 accident, the claimant testified that she consented to the amputation because of the constant pain she suffered. Previously in 1987, after a similar incident, the claimant had not chosen any of the treatment options offered by Dr. Richardson, bone graft, prosthesis, fusion or amputation, as she had mobility in her hand, could use her hand, and was not in constant pain. It is claimant's opinion that if she had not suffered her injury on July 7, 1988, she would not have chosen any of the treatment options offered by Dr. Richardson. In reference to carpal tunnel syndrome, she first noticed tingling in her left fingers, hand, and wrist during physical therapy sessions after her amputation. Claimant indicated her left hand strength had been diminished and attributed this problem to the carpal tunnel that caused pain to radiate up to her shoulder and neck.

The parties have stipulated that the claimant, on July 7, 1988, suffered a personal injury by accident when a patient grabbed her left middle finger while she was working for the respondent. However, the Administrative Law Judge found that the claimant had not sustained her burden of proof in establishing her right to an award of compensation finding that she did not prove that her personal injury arose out of and in the course of her employment. K.S.A. 44-501(a).

Whether the injury was sustained "in the course of employment" simply means that the injury happened while the worker was at work in her employer's services. Whether an injury arose "out of" her employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. The injury arises "out of" the employment if it arises out of the nature, conditions, obligations

and incidents of the employment. See Springston v. IML Freight, Inc., 10 Kan. App. 2d 501, 502, 704 P.2d 394 (1985), rev. denied 238 Kan. 878 (1985).

In this case, there is no question that the claimant's injury was sustained in the course of her employment. Claimant testified that she injured her middle left finger on July 7, 1988, when a patient grabbed, squeezed and twisted it while she was working as a psychiatric nurse for the respondent. No evidence was offered to the contrary, thus these uncontradicted facts establish claimant suffered a personal injury by accident while she was at work in the service of the respondent.

The question in this case is now narrowed to whether the claimant's work-related injury arose out of her employment. The Administrative Law Judge found that the claimant's accidental injury had no causal effect on her resulting impairment from her finger amputation. In a workers compensation case, it is well founded that when a worker has a pre-existing condition and a subsequent work-related injury aggravates, accelerates or intensifies this pre-existing condition, resulting in disability, the worker is entitled to be fully compensated for the resulting disability. Cox v. Ulysses Cooperative Oil & Supply Co., 218 Kan. 428, 544 P.2d 363 (1975). In a case similar to the factual situation of this case, the Court of Appeals of Kansas awarded benefits to a claimant, finding that a pre-existing tumor in the claimant's back had been aggravated or accelerated by a lifting accident that occurred while the claimant was at work. The Court found that even though the medical evidence established the tumor was malignant and would have become symptomatic within three to six (3-6) months without an injury, it was clear that the pre-existing tumor was aggravated or accelerated by the injury. Claphan v. Great Bend Manor, 5 Kan. App. 2d 47, 611 P.2d 180, rev. denied 228 Kan. 806 (1980).

After a careful and thorough examination of the evidentiary record in the present case, the Appeals Board finds that the claimant sustained a work-related injury on July 7, 1988, to her left middle finger that aggravated or accelerated her pre-existing sarcoidosis disease, causing her constant pain which resulted in the amputation of her left middle finger. Accordingly, the Appeals Board concludes that the claimant suffered a personal injury by accident that arose out of and in the course of her employment with the respondent on July 7, 1988.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Floyd V. Palmer, dated January 25, 1994, denying claimant benefits, is reversed. The award is remanded with directions that the Administrative Law Judge make findings on the remaining issues and to award claimant benefits in accordance with the evidence presented.

IT IS SO ORDERED.

Dated this ____ day of November, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert E. Tilton, Topeka, Kansas
Billy E. Newman, Topeka, Kansas
James Biggs, Topeka, Kansas
Floyd V. Palmer, Administrative Law Judge
George Gomez, Director